**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 460 OF 2001**

Ananta Nathu Dahibhate, )
aged 29 years, )
residing at Bhasker Nager, )
Ambernath, Taluka : Ulhasnagar, )
District : Thane, )
presently confined at )
Central Prison, Thane. ) ...Appellant
(Orig.Accused)

V/s.

The State of Maharashtra, )
at the instance of )
Ambernath Police Station, )
vide their C.R.No.I 155/94.) ) ...Respondent
(Orig.Complainant)

Mr.V.N. Kamble for the Appellant.
Mr.A.M. Shringarpure, APP for the State.

**CORAM : D.G. DESHPANDE AND**
**V.M. KANADE, JJ.**

**DATED : DECEMBER 14, 2005**

**ORAL JUDGMENT (PER V.M. KANADE, J.) :-**

. The appellant is challenging the Judgment and Order passed by the Additional Sessions Judge, Kalyan, in Sessions Case No.1248/96. By the said Judgment and Order dated 29th March, 2000, the Additional Sessions Judge was pleased to convict the accused for the offence

punishable under Sections 341, 323, 376(2)(f) and 377 of the Indian Penal Code and sentenced him to under Rigorous Imprisonment for life and to pay a fine of Rs.5,000/-, in default, to suffer Rigorous Imprisonment for three years.

2. The prosecution case in brief is that the complainant-Neeta Kadav, aged about 12 years and Surekha Vajare, aged about 12 years were going to attend the tuition classes in the morning. At that time, the accused was proceeding on bicycle from that lonely and isolated place. The accused asked the direction to go towards Ambernath and Surekha accordingly gave the direction to the accused. Thereafter, the accused chased both the girls, slapped Neeta and assaulted her on the eye and chest and forcibly committed rape on her. Neeta instead of going to the tuition class, went home and narrated the incident to her mother who in turn informed her husband. Initially, they were reluctant to file FIR, however, the neighbours told them to lodge the complaint and accordingly, after two days, the complaint was lodged. Neeta, the prosecutrix gave the description

of the accused. Thereafter, the accused was arrested. Both the girls identified the accused in the identification parade. The appellant had confessed and made a statement before the Special Executive Magistrate under Section 164 of the Cr.P.C. that he had committed the said offence and in addition that he had committed six more offences. He stated that he had committed rape on three girls aged about four years separately after removing ornaments from them and his modus operandi was a lonely girl found on the lonely road, he would rape her and remove her ornaments. The trial Court convicted the accused for the aforesaid offence and sentenced him to suffer Rigorous Imprisonment for life.

3. We have heard the learned Counsel appearing on behalf of the appellant and learned Counsel appearing on behalf of the State. Learned Counsel for the appellant has taken us through the Judgment and Order of the trial Court and the oral and documentary evidence on record. He has strenuously urged that the test identification parade was not property held and the Special Executive Magistrate did not note the identification mark on the

face of the accused. He has further submitted that the parade was held in respect of several offences by the same panch and the same Special Executive Magistrate. He submitted that though offence may have been committed since the only evidence against the accused was the identification of the accused by the prosecutrix in identification parade and in view of the lacunae in the holding of the identification parade, the accused was entitled to be acquitted by giving the benefit of doubt. He submitted that the investigating officer had fabricated the evidence since there was public outcry due to the commission of similar offences in that locality.

4. We have given our anxious consideration to the learned Counsel appearing on behalf of the appellant and the submission made on behalf of the State. In our view, the submission made by the learned Counsel for the appellant cannot be accepted. The incident in question took place on 13th July, 1994 in the morning at about 9.30 a.m. and the prosecutrix as well as the girl who had accompanied her has given a graphic account in the

manner and circumstances in which the said offence had taken place. PW 2 - Neeta has stated that she had lodged the FIR and in that FIR, she had given the description of the person. She had stated in FIR that the man was slim had a small beard and black mark over his cheek. The Doctor Dr.Gurmailsingh Kundi who examined the accused have also noted that there was black mark on his face. In the identification parade also, both the witnesses identified the accused. Though an objection is taken by the Counsel for the accused that the description of the accused is not noted by the SEM that by itself is not of any consequence. Further the Counsel for the appellant submitted that the accused was not produced in the Court and two eye witnesses viz. the victim and her friend had not identified him in Court. After the examination-in-chief of the two witnesses was over, the Court has noted that the defence did not dispute the identification of the accused and no objection was raised by this Counsel. In view of this admission, the question of production of the accused in Court does not arise. Thus, there is no reason to disbelieve the testimony of the prosecutrix and her

friend. Over and above this evidence, the Special Executive Magistrate has given the details regarding the manner in which identification parade was held. In our view, there is no infirmity in the evidence of PW 5 who has held the test identification parade. Apart from this evidence, the accused himself has given a confession to the Special Executive Magistrate and the sufficient opportunity was given to the accused after he was informed about the consequence of making the confession. He was also informed that the confession would be used against him. The Special Executive Magistrate ensured that the accused was produced from judicial custody and thereafter 24 hours time was given to him to reconsider his intention of making confessional statement. He, however, gave the confessional statement after 24 hours and stated that he was repenting for criminal acts which he had performed. In the confessional statement, he has given the details and the manner in which the present offence was committed and has also stated that he had committed other similar offences. Apart from this evidence, the evidence of the doctor also corroborates the prosecution

case. The Chemical Analyser's report also show that there was human blood found on the nicker, full pant and full shirt, jangya of the prosecutrix and the accused and blood group was "O". Thus, in our view, the prosecution has proved the case beyond reasonable doubt. The accused in his confessional statement has admitted the commission of other similar offences of similar nature. In this view of the matter, we are of the view that under the circumstances there is no reason to interfere with the conviction and sentence awarded by the trial Court. The Judgment and Order of the trial Court is accordingly confirmed.

. The appeal is dismissed.

**(D.G. DESHPANDE, J.)**

**(V.M. KANADE, J.)**